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Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IVAN VERNARD CLEVELAND,

No. Cv 07-2809-JF

Plaintiff,

PLAINTIFF'S ADMINISTRATIVE MOTION  
FOR A STAY OF PROCEEDINGS, A CASE  
MANAGEMENT CONFERENCE AND  
OTHER RELIEF.

vs.

BEN CURRY, Warden, et al.,

Defendants.

Submitted to the Court

The undersigned, having on this date filed his appearance as counsel for the plaintiff herein, now makes this ex parte, "administrative" motion for a stay of the current summary judgment proceedings, and asks the Court to convene a case management conference at its earliest convenience, so that a workable approach can be established which will facilitate — without prohibitive cost — necessary adjustments in the parties' approach to the case, in aid of the important constitutional relief which is needed herein, as follows:

As noted by this Court in its Order of May 24, 2007, one count of plaintiff's *pro se* complaint raises substantial claims and concerns about the behavior and activities of a certain prison guard (Corrections Officer, or C.O) at the California Correctional Training Facility at Soledad, one Abanico, who has shown himself to be a seriously unbalanced sexual predator. It is alleged he has repeatedly taking advantage of his authority and power over prisoners to subject numerous individual victims among them, usually chosen at whim in the flow of prisoner foot traffic in a main hallway where he has been stationed, to outright physical sexual molestation.

1 The same has consisted of grabbing, rubbing, fondling, squeezing, etc., different men's private  
 2 parts outside the clothing, reaching inside clothing to fondle and squeeze the penis, rubbing  
 3 between the legs, etc. In one recorded instance he insisted that a prisoner roll back his foreskin.

4 These and kindred attentions are carried out — always with intimidation, and often with  
 5 attendant unnecessary force in the form of, e.g, an elbow dug hard into the back, as one is held  
 6 spread-eagle facing the wall — on the pretext of a “clothed body search”, which the officer is  
 7 evidently authorized to perform on prisoners at random as they move about the institution, for  
 8 supposed purposes of “security”.

9 Plaintiff, like numerous other prisoners at CTF, has made formal and informal complaints  
 10 about CO Abanico's salacious actions to various members of the prison chain of command, with  
 11 no positive results, and has exhausted his administrative remedies as the Court found. He is in  
 12 touch with a large number of other prisoners who have complained of the same maltreatment by  
 13 the same officer, including 113 who signed and others who joined a mass grievance he prepared  
 14 against defendant Abanico. See Attachment. Many assert they have been retaliated against by  
 15 Abanico — frequently by way of false disciplinary violation (“115”) allegations, which in turn  
 16 seriously and often fatally prejudice parole applications and other available benefits, as he and the  
 17 other defendants well know — for making these complaints against him.

18 In particular, the undersigned has interviewed four other CTF prisoners who have also  
 19 completed the “602” complaint process, on essentially the same sexual molestation grievance  
 20 against the same officer: Robert Morris, Desmond Jones, Demetrius Huff and Kenneth Trask.  
 21 Trask, by way of example, recently spent more than six months in the hole, “pending  
 22 investigation”, based on a totally false report by Abanico that Trask had threatened him. Plaintiff  
 23 wishes to add their claims to his own herein; in the alternative, they seek leave to intervene as  
 24 plaintiffs, per R. 24(a) F.R.Civ P., on that one count of the existing complaint.<sup>1</sup>

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27 <sup>1</sup> The plaintiff will be asking to sever the other two claims in his complaint, dealing with  
 28 library access and dental care, from the molestation claim he shares with so many other prisoners.

1 To plaintiff's knowledge then, C.O. Abanico has been the subject of a large number of  
 2 complaints to the prison administration, many of which graphically describe his perverse actions,  
 3 but the response from defendant officials in the chain of command has been rejection across the  
 4 board, and a refusal to face facts; and the officer apparently remains assigned to posts in the  
 5 institution where he can continue his random assaults. The grievances of the plaintiff and his  
 6 cohorts having been steadfastly quashed by the prison administration and the Departmental  
 7 hierarchy above them, they are left at a pervert's mercy unless they can obtain relief in this Court.

8 In these circumstances, and in the wake of this Court's Order of Nov. 2, 2007, the  
 9 undersigned now asks the Court to convene a Case Management Conference, per R.16, F.R.Civ  
 10 P., to consider revision and expansion of the plaintiff's complaint (which is still unavailable  
 11 online) so that the more general problem of this officer's predations against CTF prisoners — and  
 12 the foolish, blind-eye indulgence and protection and harboring of such a sick and dangerously  
 13 provocative molester by the chain of command at the prison and in the Corrections Department  
 14 — can be promptly and effectively addressed. From the plaintiff's perspective through his new  
 15 counsel, the agenda would include the following:

- 16 + Amendment of the Complaint, with severance of Cleveland's two other counts;
- 17 + Addition or intervention of four other named plaintiffs; provision for others who may
- 18 perfect additional claims;
- 19 + Consideration of the possible need for preliminary relief, particularly as to retaliation
- 20 claims; practical discussion of possible negotiated remedies and other cooperation;<sup>2</sup> and the
- 21 possible need to certify a Class;

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22  
 23  
 24 <sup>2</sup> Long and generally fairly grim experience litigating about and against prisons and their  
 25 personnel has contributed to substantial hesitancy by the undersigned in taking up the cause  
 26 reflected in the complaints of these prisoners; which I now do, nevertheless, as a matter of  
 27 conscience, after meeting several of them and hearing their stories. But, I will be operating at a  
 28 good distance, without resources or support of any kind besides my own time and effort, going  
 against the full powers and dead weight of remorseless State bureaucrac(ies), and always needing  
 help and understanding from the Court per R.16(a)(1), (3) and (5), and Rule 1...

1 + Legal questions regarding the availability of permanent equitable relief restricting  
2 prison work assignments for CO Abanico (or his ilk); regarding other possible remedies, and  
3 regarding issues arising from restrictions in the so-called Prison Litigation Reform Act;

4 + Discovery plaintiff may need to establish facts and/or meet defendants' dispositive  
5 motions and claims;

6 + Disposition of (bogus) Qualified Immunity claims and other summary judgment issues  
7 if any;

8 + Measures needed to control expenses, and reasonably resolve matters with a minimum  
9 of contention, and wear and tear...<sup>3</sup>

10 WHEREFORE, this honorable Court is respectfully asked to accept the Appearance and  
11 substitution of the undersigned as counsel for the plaintiff formerly *in pro per*; to Stay the current  
12 proceedings on defendants' Motion for Summary Judgment herein, and toll the time period in  
13 which plaintiff must answer it; to order and convene a Case Management Conference at its  
14 earliest convenience to consider and discuss revision of the case as outlined above; and to grant  
15 such other and further relief as may be just and appropriate in the premises of this repulsive and  
16 discouraging case.

17 DATED: April 25, 2008.

Respectfully submitted

  
Dennis Cunningham

28 <sup>3</sup> See Note 2, above.

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

## INMATE/PAROLEE

## APPEAL FORM

CDC 602 (12/87)

Location: Institution/Parole Region

Log No

Category

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Mr. Cleveland	H-60545	A-A-A None	F-44-256-40

A. Describe Problem: Inmate Cleveland was degraded and violated by this officer (Abanico) Baye No: 4313. This Grievance is to be filed due to a number of institutional violations committed by this officer. Abanico is clearly showing an demonstrating "Abuse of Authority" unnecessary harassment and along with Inmate Cleveland a numerous amount of complaints have been filed due to "Inappropriate" touching: Being of ones genitalia, groin and inner thighs.

If you need more space, attach one additional sheet.

B. Action Requested: That there be put a stop to this degrading and disrespectful treatment, by this officer, that Mr. Cleveland along with other inmates be treated in a professional manner which avoids "embarrassment or indignity."

Inmate/Parolee Signature: Mr. Inmate Cleveland Date Submitted: \_\_\_\_\_

C. INFORMAL LEVEL (Date Received: \_\_\_\_\_)

Staff Response: \_\_\_\_\_

Staff Signature: \_\_\_\_\_ Date Returned to Inmate: \_\_\_\_\_

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number: A-1

ATTACHMENT



• ABUSE OF AUTHORITY;

• UNNECESSARY HARASSMENT;

• INAPPROPRIATE TOUCHING BEING OF ONES GENITALIA GROIN AND INNER THIGHS;

• STOPPING AND SEARCHING. THE SAME INMATE FOR NO REASON WITHIN - 30-min FROM FIRST SEARCH;

• FORCING ELBOW IN INMATES SPINE/BACK IN A WAY THAT INFLECTS PAIN ESPECIALLY INMATES WHO MAY SUFFER FROM MEDICAL CONDITIONS OR WHO HAVE TO DEPEND ON A WALKING CANE. THIS OFFICE IS AND HAS BEEN DEM-

ONSTRATING A SIGN OF UNPROFESSIONALISM BY DEGRADING INMATES BY FORCING THEM TO PUT THEIR HANDS ON THE WALL WHILE HE USES THEIR BACKS TO WRITE ON. THIS

GRIEVANCE IS IN NO WAY DUE TO ANY TYPE OF RE-TALIATION BY THE INMATES BUT IS TO ASSURE THAT FUTURE CONTACT WITH THIS OFFICER WILL BE HANDLED IN A PROFESSIONAL MANNER. WE THE UNDERSIGNED

INMATES FEEL THAT WE HAVE BEEN DEGRADED AND VIOLATED BY OFFICER "ABANICO" BAY NO- 4313. WE HAVE SIGN THIS

LEGAL "602" GRIEVANCE SO THAT WE MAY ADVISE THE ADMINISTRATION STAFF OF THIS DISRESPECTFUL AND DEGRADING TREATMENT.

OFFICER ABANICO IS CLEARLY VIOLATED INMATES RIGHTS. HE IS ALSO SHOWING AND DEMONSTRATING A SIGN OF HARASSMENT AND ABUSE OF HIS INSTITUTIONAL AUTHORITY. THIS OFFICER

SEARCHED INMATE CLEVELAND AND OTHER INMATES IN A WAY THAT IS PROHIBITED BY LAW. OFFICER ABANICO IS TOUCHING AND

IN SOME CASE SQUEEZING INMATES GENITALIA. HE IS DEGRADING INMATES BY TOUCHING THEIR INNER THIGHS AND GROIN AREA. THIS

CAN AND IN MANY OPINIONS IS A CLEAR ACT OF SEXUAL MISCONDUCT. ~~IN~~ <sup>TOUCHING</sup> IN PROPER IS A INSTITUTIONAL VIOLATION.

AND SHOULD NOT UNDER ANY CIRCUMSTANCES BE TOLERATED OR ALLOWED. OFFICER ABANICO IS ALSO VIOLATED INMATES RIGHT BY PUTTING AND

SHOVING HIS ELBOW INTO A INMATES BACK FOR NO APPARENT REASON.

A-2

Also This OFFICER should NOT be Allowed TO USE ANY PART OF A INMATES body TO WRITE ON, OR be Allowed TO MAKE RACIST REMARKS. BEING THAT his REASON FOR STOPPING AND SEARCHING more black inmates ON THE DAY THAT CHICKEN IS SERVED IS DUE TO black PEOPLES LIKE FOR THIS TYPE FOOD" THIS WAS AN IS A 'RACIST REMARK' FOR ANY STAFF / OR EMPLOYEE TO JOIN IN OR CONDONE INSUCH "ill-legal methods" THEN THEY ALSO ARE SHOWING LACK OF LEADERSHIP" NO INMATE SHOULD HAVE TO BE SUBJECT OR BE TREATED IN SUCH A DEGRADING MANNER. THIS OFFICER HAS VERY LITTLE IF NONE, RESPECT FOR THE RIGHTS OF OTHERS. COMPLAINTS HAVE BEEN FILED. INMATES HAVE BEEN THREATENED THAT THEY WOULD BE HELD IN "ISOLATION" IF THE COMPLAINT WENT FORWARD WITH THEIR "COMPLAINTS". A PRISONER CANNOT BE PUNISHED FOR FILING A LEGAL GRIEVANCE OF ANY KIND ON A PRISON OFFICIAL. RETALIATION OCCURS AND GOES INTO EFFECT WHEN PRISON OFFICIAL PUNISHES PRISONER BECAUSE PRISONER HAS EXERCISE HIS / OR HER CONSTITUTIONAL RIGHT. HAFF V. COOK F 923 SUPP 1104.

LIKE AS INMATES DO CLEARLY UNDERSTAND AND "RESPECT" THAT ONE OF THE REQUIREMENTS AND DUTIES OF A CORRECTIONAL OFFICER IS TO SEARCH CELLS / AND ALSO CONDUCT IN A BODY SEARCH. BUT WHEN AN INMATE IS BEING TREATED AND DEGRADED IN A WAY THAT THE OFFICER IS DOING THEN THERE IS A VERY SERIOUS PROBLEM WITHIN THIS INSTITUTION THAT NEEDS AND SHOULD BE DEALT WITH IMMEDIATELY. "EVERY INMATE HAS THE RIGHT TO BE TREATED RESPECTFULLY, IMPARTIALLY, AND FAIRLY, BY ALL STAFF / EMPLOYEES. A EMPLOYEE OR STAFF WILL NOT "OPENLY" DISPLAY DISRESPECT OR CONTEMPT FOR OTHERS IN ANY MANNER INTENDED TO OR REASONABLY LIKELY TO INCITE OR PROVOKE VIOLENCE [3004] (A)(B)(C). AN INMATE IS SUBJECT TO AN INSPECTION, EITHER CLOTHED OR UNCLOTHED. ALL SUCH INSPECTIONS SHOULD BE CONDUCTED IN A PROFESSIONAL MANNER WHICH AVOIDS "EMBARRASSMENT" OR INDIGNITY TO THE INMATE [3287] (B) OF PEN. CODE.

A-3

Signing - Short

Names	C.D.C. No.
Irvin Cleveland	H-60545
Ken Chatham	C-05576
Donald Johnson	B-31355
E. Johnson	H-16942
W. Johnson	E-1823
WARRETON, DEAN	E-85765
Al Bount	H-68911
Salvador Bunt	V-75053
Shirley Bunt	C-81587
Carl Howell	K-87903
Bob Bunt	V-44441
James M. Bunt	D-56264
John Bunt	P-63094
Robert E. Bunt	V-61591
William Bunt	D-85936
John M. Bunt	F-09979
Robert H. Bunt	T-76244
John F. Bunt	J-57533
John F. Bunt	V-26421
John F. Bunt	E-26569
Andrea Bunt	D93828
Paul Bunt	P-26759
Henry Bunt	E-81271
Brown Bunt	F-80518
Robert Bunt	J-32468
John Bunt	E-22386
John Bunt	F-13215
John Bunt	B-1213
John Bunt	F-10316
John Bunt	Z-Ming 1022
John Bunt	D-67624
John Bunt	G-344 VP
John Bunt	E57348
John Bunt	G-1384
John Bunt	C-32166
John Bunt	E-1134
E. KENNEDY	D-30780
John Bunt	F-304
John Bunt	F-13232
John Bunt	G-1474
John Bunt	C-24500
John Bunt	G-248UP

VALLEY ADULT SCHOOL

USE BOTH SIDES

A-4



Tham. Hoon F15797

James H. Joyner

Halden H57414

Harold H-112357

H. H. H. D-60488

A. T. H. D-37345

CARST. K-19328

B. H. H. E-1649 D-1320

Otto H. H. H-65569 G-10R 300

J. H. H. J51582 B-10PL

D. M. H. H. H-66115 Y-307 up

Simmons H67207 Y 219

Brooks C-11422 D-W-237

Digger C-05327 F-230 W

H. H. H. H-58899 DW-328 up

Henderson D-05486 DW-104 W

H. H. H. H-11450 D-W-304 up

H. H. H. K-86475 EW-246 L

John-Charles T.56703 EW-124 U

Gyrene, H. H. E-99940 EW-113 V

H. H. H. E-88670 E-108 U

H. H. H. E-10079 C-137

H. H. H. G-221 C-99461

Produce Summer H. H. H-3150P J-994513

Earl H. H. V-03356 L-W-125

Williams H-16042 DW-309 L

PERRY H-80075 D-W-109 C

Walker H-41551 E-135-L

H. H. H. H-88103 Z-218

H. H. H. C-45730 G-219

H. H. H. C-6067 Y-133

H. H. H. C-67683 Z-124 L

S. Swan H-57996 X-133

D. Turnbull H-6617 E-234

H. H. H. H-88055 E-127 L

H. H. H. H-88055 E-127 L

H. H. H. H-88055 E-127 L

D. W. Kohler E-90573 Z-125 U

S. McClary D-73611 E-226 L

H. H. H. H-2226 E-111 U

A-5

Robert Momo D13147  
 Bruce Brien EF7250  
 Hargnew Larry K 70157  
 B. dea T-64385  
 Howard Henry C 87490  
 Emma Henry V 64383  
 Lonnie Johnson P-74844  
 Birken Bobby C-37176  
 Pennington T-43909  
 U. Bailey C-41751  
 M. McCluskey K-96270  
~~W. J. Hall~~ V34650  
~~W. J. Hall~~ C-936410  
~~W. J. Hall~~ K-88105  
~~W. J. Hall~~ F-19991  
~~W. J. Hall~~ P 17387  
~~W. J. Hall~~ E-47757 E-122L  
 LEE RIC D-11150 G-307L  
 DONNELL Moore D73077 G-258  
 Madia Jones H-41984 D-W-117LOW  
 Johnson Curtis C-36895 DW-1234P  
 Duncan Sr. A. J. K43663 DW-121  
 Johnny D. Pruitt C-15726 T-338  
~~Timothy Kain~~ D-5712 C-105  
 Robinson George H-61102 B-334  
~~W. J. Hall~~ P-89446 DW-1144P  
 W. J. Hall T-01072 CW-337  
~~W. J. Hall~~ K-02454 D-W 230<sup>u</sup>  
~~W. J. Hall~~ E-20095 DW-129L  
~~W. J. Hall~~ D-60422 G-W-122L  
~~W. J. Hall~~ C-78227 GW 210  
~~W. J. Hall~~ B-67647 F-306-L  
~~W. J. Hall~~ C-25232 F-107<sup>u</sup>  
~~W. J. Hall~~ C-35670 F-242K  
~~W. J. Hall~~ K-37959 F-3541

R Miller	C-13017	F-35940
J. Thomas	E18879	F-346
Palmer, D.	E-36564	F-3434
Lowndes	C46704	F315